

GROTON CONSERVATION COMMISSION

Minutes

Tuesday, October 22, 2013

Chairman Peter Morrison called the meeting to order at 7:00 p.m. in the 2nd floor conference room in Town Hall. Members Bruce Easom, Marshall Giguere, Nadia Madden, Peter Morrison, John Smigelski, and Rena Swezey were present. Conservation Administrator Barbara Ganem was present.

Member Swezey recused herself and sat in the audience after asking Chairman Morrison if Andrew Davis could speak to the Commission about filing for work on Sargisson Beach. She explained Mr. Davis had been elected as Chairman and she as Vice Chairman of the newly appointed Sargisson Beach Committee. Mr. Davis stated he would like to be on the Commission's next agenda so the proposed work, pulling sand up from the lake to replenish the beach area, can be done this fall. After considerable discussion, the majority of Commissioners agreed that the filing of a Notice of Intent is appropriate since this is activity within an actual resource area. A. Davis indicated the sand that has flowed into the lake will be pulled up with machinery and then volunteers will scrape through the materials with pitchforks and rakes. Any muck will be transported to the Town landfill. Sand will then be re-graded into the beach area.

7:00 p.m. – Appointment Joe Ferguson 7 Baby Beach Rd.

Mr. Ferguson was not present, and Commissioners agreed to postpone discussion and go on to the next scheduled hearing.

7:15 p.m. – 99 Indian Hill Rd. Notice of Intent/Spigarelli DEP#169-1099

Surveyor Stan Dillis was present to explain the proposed driveway for a new house lot (Lot 1) with frontage on Indian Hill Rd. The beginning of the driveway is within an existing lawn area which is within the 100 ft. buffer zone of Bordering Vegetated Wetlands across the street. Everything else for the new house is outside of the buffer zone. Member Auman pointed out we need to hear from Natural Heritage and MESA on this project. M. Giguere regarded the lawn and roadway as previously altered areas. He questioned where the swale that parallels Indian Hill Rd. empties. S. Dillis responded there is an old cast iron culvert which went under a cart road. He noted it is substantially blocked. The driveway will be tilted to the uphill side to assure recharge on site. The culvert under the driveway will outlet to a riprapped swale to allow sediments to settle out of any water flow.

P. Morrison asked if this project is exempt from the Bylaw, and C. Auman pointed out this is new work within an altered area and falls under the Groton Wetlands Protection Bylaw but may not be held to the Bylaw performance standards. Abutter Bob Lotz (163 Indian Hill Rd.) asked why he wasn't notified of the site visit, and B. Ganem said the public is notified of the hearing, but the Commission cannot give permission to the public to go onto others' private land. Chairman Morrison summarized the outstanding items as the replacement of wetland flagging in the field and the receipt of correspondence on the MESA issue. With the applicant's consent and upon a motion by J. Smigelski, seconded by B. Easom, it was

VOTED: to continue the hearing for DEP#169-1099 to November 12, 2013.

Upon a motion by J. Smigelski, seconded by C. Auman, it was

VOTED: to approve the minutes of October 8, 2013.

The vote was unanimous.

7:30 p.m. – Maple Ave./Johnston Conservation Area Request for Determination of Applicability

Trails Committee member Olin Lathrop explained there is an existing trail on the Johnston property that crosses a 4 ft. wide and 2 ft. deep ditch. The ditch holds water in the wet part of the year but was dry at the time of the Commission's visit this past Saturday. Users have thrown sticks in to allow dry passage. The Trails Committee is advocating the installation of a trail bridge and has the funds to build it, as well as the manpower. Their plan is to carry the pieces in to be assembled on site, using cinder blocks as the base to provide solid footing for the bridge. They would like to do the work before the ground freezes.

Member Auman noted the surrounding area looked as though it could be quite wet in the spring, but the proposed bridge is an improvement over having users travel up and down the ditch. B. Easom commented that flooding from the Nashua River could reach this far inland. He suggested either pounding pipes in or tying a cable to a tree to secure the bridge during flood events. It was determined this ditch is within the 100-yr. floodplain of the Nashua River. N. Madden thought placement between the two trees observed on the far side of the ditch would be appropriate. J. Smigelski recommended using solid concrete blocks as the hollow blocks are not designed to work in a vertical position. Upon a motion by C. Auman, seconded by J. Smigelski, it was

VOTED: to issue a negative #3 Determination in which 1) the bridge shall be anchored to prevent floating away; 2) position bridge between 2 trees adjacent to where logs are piled; 3) solid cement blocks shall be used to support bridge ends; and 4) work shall be done at a dry time of year.

The vote was unanimous.

7:45 p.m. – 373 Lowell Rd./O'Connell Request for Determination of Applicability

Explaining this is a septic upgrade for an existing house, surveyor Stan Dillis stated the septic leaching field will be located outside of the 200 ft. Riverfront Area of Martins Pond Brook. The septic tank, pump chamber, and sewer force main are partially located in the Riverfront Area. He acknowledged the old system is off the plan. M. Giguere said usually the plans include some language about how the old system is to be handled. Mr. Dillis explained the property has not yet been subdivided, and there will be a new property boundary for this existing house. He estimated it will take several days to complete the work (it includes going under a small retaining wall). The sewer pipe will be 1 ft. below ground near the tank but will be deeper (3 or 4 ft.) as it goes up the hill toward the leach field. S. Dillis said the survey team located the top of bank to Martins Pond Brook which is across Lowell Rd. to determine the 100- and 200-foot Riverfront Area. Chairman Morrison asked how far away the wetland is on the other side of Schoolhouse

Rd., and Mr. Dillis estimated about 300 ft. from this work. Upon a motion by M. Giguere, seconded N. Madden, it was

VOTED: to issue a negative #3 Determination requiring the applicant to find and fill the old septic tank.

The vote was unanimous.

Returning to the subject of Ferguson/7 Baby Beach Rd. B. Easom commented his roof drain empties directly into the lake. Mr. Ferguson is looking for a Certificate of Compliance for DEP#169-1016, the roof raise project. With a direct discharge into the lake and the extension of the deck further than it was supposed to be, this project does not appear ready for a Certificate. N. Madden asked if he did what he said he was going to do. P. Morrison asked whether the roof drain could be directed to some sort of recharge structure. Mr. Easom expressed concern over the presumption that the shore line retaining wall is in the right location. The January 7, 2012 photograph shows Sonatubes and a column holding up the deck. The deck beam extends 1 to 2 feet over the lake. It is a violation of the Order to stick out over the lake. He felt this was a significant difference as the deck hasn't moved but the wall has.

N. Madden objected to switching between Orders of Conditions and Requests for Determination of Applicability for the property. She stressed that they need to be treated separately. P. Morrison questioned whether using a septic plan for a scaled drawing was appropriate but did not disagree that the wall has been moved. N. Madden expressed concern over the angling effect shown in the photographs, and she felt the Commission should not be in the business of deducing locations from photographs. P. Morrison said "Assuming it is out some distance, what is needed to pin it down?" B. Easom, after reviewing the photographs from January 7, 2012 and September 21, 2013, estimated the shore line retaining wall was about 2 ft. further into the lake than the previous railroad tie wall. J. Smigelski agreed this was the case. If we're headed to court it may be worthwhile to hire a surveyor to establish facts. J. Smigelski and P. Morrison questioned the level of cooperation and results from taking this step. B. Easom said Mr. Ferguson could go back to the location of the original retaining wall and not fill in the lake and not hang the deck over the lake. N. Madden felt it was a Commission failure to not ground truth what Mr. Ferguson submitted. If the Commission didn't raise the issue on the second Order of Conditions he did what he said he would do. B. Ganem pointed out every Order of Conditions specifies that the conditions control over the submitted plans. This is standard language in an Order. P. Morrison said at least it's not a midnight wall.

M. Giguere reminded Commissioners of the repeated violations at this property. N. Madden declared it is not a huge variance, and the Commission did not ground truth which is bad on us. J. Smigelski acknowledged he has come late to the issue as a relatively new Commissioner. R. Swezey contended that any owner of a piece of lake property is going to extend their property into the lake; filling around the lake is common. She agreed with N. Madden's assessment of the situation. C. Auman thought the Commission was not doing applicants any favors by accepting hand drawn plans. He indicated the Commission was very clear with Mr. Ferguson both in the field and in statements at the meetings about not extending over or into the lake. J. Smigelski said an engineered plan can be preferable in such instances, but C. Auman observed the

Commission is criticized for requiring an applicant to incur this expense. R. Swezey commented it is not very practical to have him remove part of his deck and move the retaining wall back.

DEP#169-1016 required that roof runoff be directed into a recharge structure. The Commission could require that he remove the downspouts into the lake. P. Morrison asked if there could be an allowance to say the deck extension was insignificant, and C. Auman questioned whether the Commission should waive a condition of the permit.

B. Easom said this applicant has been going through the process but has a pattern of making a promise and then exceeding the project scope, a track that has been repeated multiple times. There have been no consequences for exceeding what has been allowed and what was required. P. Morrison disagreed that there have been no consequences. As the Commission goes forward, the Commission will be measuring ahead of time. B. Easom asserted "There have been no consequences relative to this applicant." P. Morrison argued the Commission has not found him at fault; there has been discussion but the Commission's answer has been to defer action. N. Madden suggested issuing a Certificate of Compliance requiring roof runoff be discharged into a recharge structure and finding the extension of the deck over the lake not significant. P. Morrison maintained the Commission has no evidence that the resource area is being harmed. B. Easom questioned how the Commission can find that it is better to have the extended deck than not having it there. J. Smigelski said we would have to go to court with hard evidence, and he is not sure photographs meet this standard. B. Easom recommended seeking legal advice and talking to an engineer. Upon a motion by N. Madden, seconded by R. Swezey, it was

VOTED: to issue a Certificate of Compliance for DEP#169-1016 contingent upon the removal of the direct discharge to the lake and replacing it with a recharge structure that captures roof runoff coupled with a finding that the deck extension is insignificant.

The motion passed with R. Swezey, C. Auman, P. Morrison, and J. Smigelski voting in favor, M. Giguere and B. Easom voting in the negative, and N. Madden abstaining.

B. Easom said he would be in favor of the Commission paying for a survey to resolve the question about the extension of the retaining wall into the lake under DEP#169-1077. N. Madden questioned whether it is acceptable to go out into the lake and if this applicant could do compensatory flood storage on his property. J. Smigelski asked whether the photographs are accurate enough to prove the lake wall was moved, and Mr. Easom replied that the standard is a preponderance of evidence. P. Morrison expressed concern that a court case could cost the town a lot. Upon a motion by R. Swezey, seconded by J. Smigelski, it was

VOTED: to allow Mr. Ferguson to proceed with the remaining two walls under DEP#169-1077 subject to measurement in the field to confirm the submitted Notice of Intent drawing.

The motion passed with R. Swezey, N. Madden, J. Smigelski, P. Morrison, and C. Auman voting in favor, and B. Easom and M. Giguere voting in the negative.

N. Madden noted that enlarging the shed, one of the RDAs filed by Mr. Ferguson, means that roof runoff will reach the lake faster. It is significant that it's bigger, but does it matter? Upon a motion by B. Easom, seconded by M. Giguere, it was

VOTED: that the shed should be removed and replaced with a 12 ft. x 8 ft. shed.

The motion passed with N. Madden, M. Giguere, C. Auman, and B. Easom voting yes, and J. Smigelski, P. Morrison, and R. Swezey voting no.

C. Auman asked why this is the Commission's fault as it is the applicant who has increased the size of his permitted shed. Members suggested Mr. Ferguson request an amendment to DEP#169-1077 as a way to legitimize the size increase. The additional block retaining wall that has already been constructed on the southwest corner of the lot could also be included. B. Easom suggested the Commission consider fines. R. Swezey maintained the requirement to remove the shed and replace it with the correctly sized shed is like a fine. C. Auman questioned whether the Commission would consider issuing a fine instead of requiring the shed be torn down. M. Giguere indicated he would be willing to recall the vote if there is an interest. B. Easom agreed to withdraw the original motion. Upon a motion by C. Auman, seconded by R. Swezey, it was

VOTED: to reconsider the vote to remove and replace the shed and instead issue a fine in an appropriate amount.

The motion passed with P. Morrison, J. Smigelski, R. Swezey, and C. Auman voting in favor, and M. Giguere, N. Madden, and B. Easom voting in the negative.

Upon a motion by B. Easom, seconded by M. Giguere, it was

VOTED: to withdraw the original motion requiring the removal and replacement of the shed.

The motion passed with C. Auman, P. Morrison, J. Smigelski, and R. Swezey voting yes, and B. Easom, M. Giguere, and N. Madden voting no.

In discussion on the amount of the fine, C. Auman reviewed the Bylaw which states "In addition to any other remedy available in law or in equity, any person who violates any provision of this chapter, regulations, permits, or order of the Conservation Commission issued thereunder, may, at the option of the Conservation Commission, be subject to noncriminal prosecution pursuant to MGL C. 40, § 21D, in which case the following penalties shall apply, with each day constituting a separate offense:

- (1) First offense: \$50.
- (2) Second offense: \$100.
- (3) Third and subsequent offense: \$300."

The fine would be \$50 for the first day, \$100 for the second day, and \$300 for the third day. It would be a small penalty of \$450 for the violations. P. Morrison said the Commission should provide a summation of the violations. C. Auman advocated for some penalty for the violations.

P. Morrison said, if the process is acceptable, we can include specifications of how he did not comply i.e., shed too big, failure to notify Conservation Administrator of intention to start work, failure to record the Order of Conditions for DEP#169-1077 before starting work, and the addition of a retaining wall without a permit. B. Easom thought the issuance of a fine completely inadequate. N. Madden felt that a fine is better than nothing; it is a slap on the wrist. J. Smigelski said he was okay with it. R. Swezey said she would go along with a fine but did not agree with asking him to rip anything down. C. Auman noted people are saying they want something reasonable, but it must be something that gets the applicant's attention. R. Swezey felt the fine was too high. C. Auman mentioned the Commission may abate fines and has the option to negotiate.

M. Giguere said the amount seems wholly insignificant compared to the violations. He did not agree that a fine was the correct approach. J. Smigelski questioned whether \$300 would be more appropriate. Members pointed out that each violation is subject to a fine, and the second offence is \$100 with each day adding on more. In the end, Commissioners agreed to issue a fine of \$150 for day 1 and day 2 of an offence. M. Giguere and B. Easom opposed a fine for two days' of violations.

B. Easom reported the Community Preservation Committee had received a 2-pg. submittal from the Parks Commission for an additional \$39,000, a project for weed harvesting at Baddacook Pond, and a project at Hazel Grove. \$309,000 has been previously approved for the Cow Pond Brook project.

Commissioners agreed to include Academy Hill on the next site walk. B. Ganem explained Natural Heritage has concerns about starting the demolition work at the camps at Baddacook Field before the starting date for the forestry work due to the presence of rare species. She has talked to Larry Hurley about this delay, and the paperwork will be filed shortly. Fortunately, it will not be necessary to do a MESA filing for the project. Eric Radlof of Bay State Forestry Services urges the Commission to re-consider manual removal of invasives at Farmers & Mechanics as this can form a ready seed bed for invasive plants. He recommends having a licensed applicator apply an herbicide as this will more effectively eliminate the threat. B. Easom suggested letting them do this work as originally planned.

Ellen Anderson has proposed to do the appraisal on the Schofield property for \$2500 and will be sending out the contract shortly. The work will take 60 days.

There being no further business, the meeting was adjourned at 10:10 p.m.

Notes taken by

Barbara V. Ganem
Conservation Administrator

Approved as amended 11/13/13.